

JOSEPH B. MCNEAL, d/b/a PAGEDATA
PageData
PO Box 15509
Boise ID 83715
208-375-9844

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IDAHO PUBLIC
UTILITIES COMMISSION

Appearing Pro Se

BEFORE THE IDHAO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
QWEST CORPORATION AND MCLEODUSA)
TELECOMMUNICATIONS SERVICES, INC.)
FOR APPROVAL OF AN AMENDMENT TO AN)
INTERCONNECTION AGREEMENT FOR THE)
STATE OF IDAHO PURSUANT TO 47 U.S.C. §)**

CASE NO. QWE-T-02-17

**IN THE MATTER OF THE APPLICATION OF)
QWEST CORPORATION AND ESCHOLON)
TELECOM, INC. FOR APPROVAL OF AN)
252(e). (PRIOR CASE NO. QWE-T-00-7)
AMENDMENT TO AN INTERCONNECTION)
AGREEMENT FOR THE STATE OF IDAHO)
PURSUANT TO 47 U.S.C. § 252(e). (PRIOR)
CASE NO. QWE-T-00-13))**

**PETITION FOR
RECONSIDERATION**

**IN THE MATTER OF THE APPLICATION OF)
QWEST CORPORATION AND COVAD)
COMMUNICATIONS COMPANY FOR)
APPROVAL OF AN AMENDMENT TO AN)
INTERCONNECTION AGREEMENT FOR THE)
STATE OF IDAHO PURSUANT TO 47 U.S.C. §)
252(e). (PRIOR CASE NO. USW-T-99-3))**

PageData hereby submits its Petition for Reconsideration of the following rulings, finding, and holdings regarding the above case.

In its Findings and Decision the Commission said, "This proceeding was not intended to be an enforcement action, rather it is limited only to whether the agreements now before us

should be approved under the Act.”¹ However, the Commission also stated, “The Commission found that because these Applications raised important issues they should not be summarily approved.”² The Commission has not addressed these important issues that the Applications brought up.

The Commission has purposely limited the scope of or refused any investigation into Qwest’s non-filing of interconnection agreements despite repeated requests. However, one of the Commission’s fiduciary duties is to make sure that Qwest complies with Section 252(e)(1) wherein it states:

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.³

The Commission is failing to act under Section 252(e)(5) by failing to require Qwest to file known interconnection agreements.

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.⁴

Five Commissions or Commission Staff (Minnesota, Iowa, Arizona, New Mexico, and Idaho) have determined there is more than enough evidence for the burden of proof to show that Qwest has not filed all interconnection agreements in Idaho. Contrary to the Commission’s statement in their Order No. 29154 in this case,⁵ it does not take Qwest admitting they broke the law to rise to the level for there to be enough evidence where the Idaho Commission should

¹ Idaho PUC Order No. 29154, Page 8

² Idaho PUC Order No. 29154, Page 2

³ 47 U.S.C. Section 252(e)(1)

⁴ 47 U.S.C. Section 252(e)(5)

⁵ Idaho PUC Order No. 29154, Page 9, the Commission stated, “Furthermore, PageData has not provided any evidence that convinces us that considering or granting these requests at this time would be at all relevant to the sole purpose of this proceeding, whether to approve these agreements under the terms of the Telecommunications Act of 1996.”

investigate. Even the Commission staff recognized in their comments that “at least one of the agreements refers to previous agreements that have yet to be filed with the Commission.”⁶ This alone is reason enough for the Commission to order Qwest to file all verbal and written agreements (currently in effect or cancelled) that apply to Idaho that have been filed in any other state. This does not require a long, drawn-out investigation.

Qwest has been found guilty of not filing all interconnection agreements in Minnesota, Iowa, Arizona, and New Mexico. The evidence provided by these state commissions is more than reasonable grounds for the Idaho Commission, at the very minimum, to order Qwest to file all previously unfiled verbal and written documents (including currently effective and cancelled agreements) that are applicable in Idaho and that were provided to other state commissions during their investigations.

In the Commission’s Order No. 29140, the Commission continues to misquote 49 U.S.C. Section 51.809. The Commission said, “The ability to pick and choose applies to interconnection agreements approved by this Commission.”⁷ 49 U.S.C. Section 51.809(a) of the Local Competition Order reads:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.⁸
(*underline emphasis added*)

In essence, this means that any interconnection agreement approved by any state commission is available for pick and choose in another state under the same rates, terms, and

⁶ Idaho PUC Order No. 29154, Page 4

⁷ Idaho PUC Order No. 29140, dated November 1, 2002, *In the Matter of the Joint Petition of Robert Ryder, DBA Radio Paging Service, Joseph McNeal, DBA PageData and InterPage of Idaho, for a Declaratory Order and Recovery of Overcharges from US West Communications, Inc.*, Page 17

⁸ 49 U.S.C. Section 51.809(a)

conditions. The burden of proof is on the ILEC to show the other commission that 1) the costs are greater than in the original agreement or 2) it is not technically feasible to provide the service.

The misquote of Section 51.809 by the Commission has bearing on this proceeding because under the Commission's rationale a carrier cannot "pick and choose" from a multi-state interconnection agreement that has been strategically filed in one state over another and that has been unlawfully withheld from each applicable state commissions' review by orchestrated design.

The Commission's reluctance to investigate Qwest on unfiled interconnection agreements has given Qwest an economic and procedural advantage by not being in compliance with Section 252(e). By not requiring Qwest to file all applicable agreements, the Commission is encouraging this continuous practice of price fixing in Idaho.

By not addressing other unfiled interconnection agreements, the Commission has an excuse for not answering the following questions that may be detrimental to Qwest's interests and that would contradict orders already issued by the Commission:

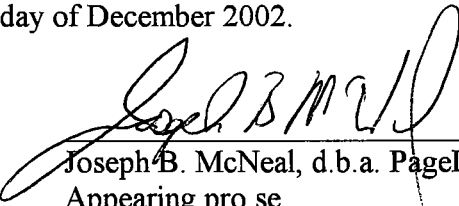
- 1) When was Qwest obligated to file all unfiled interconnection agreements applicable to Idaho that have been filed in other states?
- 2) When was Qwest obligated to provide a single point of presence in the LATA?
- 3) When was Qwest obligated to interconnect at any technically feasible point in the LATA?
- 4) What is the formula for settling disputes relating to obligations set forth in Sections 251(b) and (c)?

These issues have been addressed in interconnection agreements that Qwest tried to keep secret. Because the Commission has refused to answer these questions and refused to ask Qwest at a minimum to file agreements that are applicable to Idaho that have been filed in other states, PageData and other carriers have been denied equal protection under the law and due process.

PageData and others have been complaining for over three years that Qwest had unfiled interconnection agreements and were procedurally blocked from providing that evidence by Rule 408. This evidence has just been released by state PUCs that had the authority to make the information public. The Commission has continually limited the scope of investigations.

Approval of these six agreements is not enough. We are demanding that the Commission specifically address these four questions and order Qwest to file all verbal and written agreements (including currently effective and cancelled unfiled agreements) that are applicable to Idaho and that Qwest has filed in other states. This would make the same terms and conditions available to all carriers through pick and choose or adoption, so some select carriers do not have preferential treatment by Qwest. This is the most cost efficient way to get Qwest into compliance with Section 252(e) in the state of Idaho.

Respectfully submitted this 10th day of December 2002.



Joseph B. McNeal, d.b.a. PageData,
Appearing pro se